

**UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT**

UNITED STATES OF AMERICA,

Plaintiff,

v.

SERHAT GUMRUKCU,

Defendant.

Case No. 5:22-cr-58

**SERHAT GUMRUKCU’S MOTION TO LIMINE NO. 5:
MOTION TO EXCLUDE UNNDISCLOSED RULE 404(B) EVIDENCE**

Defendant Serhat Gumrukcu, by and through his attorneys of record, respectfully moves *in limine* for an Order precluding the Government from introducing undisclosed Rule 404(b) evidence. Defendant Gumrukcu respectfully requests oral argument on this motion at the March 14 hearing at trial’s commencement.

Pursuant the Court’s scheduling Order, the Government was directed to provide defendant, by June 26, 2024, notice of the evidence it seeks to offer pursuant to Rule 404(b). *See* Dkt. 181; *see also* Dkt. 183 at 17:17-18:7. The Government timely provided notice of its 14 categories of Rule 404(b) evidence it sought to admit, and the parties’ litigated the admissibility of this evidence at a Pretrial Hearing held July 29, 2024. *See* Dkt. 195 (Transcript); *see also* Dkt. 185, 186, 190, 192 (briefing).

The Government did not notice its intent to introduce other act evidence with respect to defendant’s conduct in his work with and at Enochian Biosystems. Nor did it provide notice that it would seek to introduce allegations of other act conduct presented in two published accounts in

the November 2019 (Seeking Alpha and White Diamond reports), and another the week following defendant's indictment (Hindenberg report). We attach all three reports in Ex. A.¹

But when the defense asked the Government to confirm that its so-called Enochian evidence addresses defendant's alleged motive for the charged homicide, the Government declined. As to defendant's concern that the prosecution would seek to introduce additional other act evidence, pursuant to Fed. R. Evid. 404(b), from Enochian witnesses (and possibly others), the Government disclaimed knowledge of any specific allegations and inquired further of the defense. The defense then noted the obvious: if the Government was not aware of any other act evidence arising from defendant's conduct related to Enochian it would seek to introduce at trial, then it necessarily agreed it would not be doing so.² This truth was buttressed by the fact that the Court's scheduling order required disclosure of its notice to introduce any and all other act evidence no later than June 26, 2024. Nevertheless, the Government declined to so agree.

Because the time to provide notice of evidence to be introduced pursuant to Fed. R. Evid. 404(b) passed more than eight months ago, the Court should enforce its scheduling order and preclude the prosecution from introducing any other act evidence not timely noticed and addressed at the July 29, 2024 pretrial conference. This Order should include any testimony or

¹ This morning, the Government informed us that it continues to seek to admit the White Diamond Report, agreed that does not intend to offer the Hindenberg report, and remained silent on the Seeking Alpha report. The White Diamond report begins on page 2 of Exhibit A, followed by the Seeking Alpha report and the Hindenberg report.

² Proving this point all the more, today the Government wrote that it needed the defense to identify which allegations of fraud at Enochian the defendant is concerned about. But that confession of ignorance only establishes the Government's inability—even at this late date—to identify and justify the introduction of any other act evidence connected to Defendant Gumrukcu's conduct at Enochian.

exhibits alleging misconduct at Enochian and the three reports identified above pursuant to its scheduling order, as well as Fed. R. Evid. 401, 402, and 403.

Dated this 28th day of February 2025.

Respectfully submitted,

/s/ Susan K. Marcus
SUSAN K. MARCUS
Law Firm of Susan K Marcus LLC
29 Broadway, Suite 1412
New York, NY 10006
(212) 792-5131
susan@skmarcuslaw.com

/s/ Ethan A. Balogh
ETHAN A. BALOGH
Balogh & Co., APC
100 Pine Street, Suite 1250
San Francisco, CA 94111
(415) 391-0441
eab@balcolaw.com

Attorneys for Defendant
SERHAT GUMRUKCU